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Paper No. 9

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MAY 21 2004

OFFICE OF PETITIONS

In re Application of
Darrell Metcalf
Application No. 09/929,615
Filed: August 13, 2001
Attorney Docket No. APPAREL WITH
CONTIGUOUS VIDEO-IMAGING SURFACE
AND APPARATUS FOR CONTROLLING AND
FORMATTING VIDEO IMAGERY ON SUCH
SURFACES

DECISION ON PETITION

This is a decision on the "PETITION TO REVIVE," filed April 9, 2004.

The petition is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed September 5, 2003. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. An amendment was filed on December 8, 2003 (certificate of mailing December 3, 2003). However, this amendment was determined by the examiner not to place the application in condition for allowance (See Advisory Action mailed December 18, 2003). No proper reply having been received and no extension of time obtained, the application became abandoned on December 6, 2003. The instant petition precedes the mailing of a Notice of Abandonment.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the reply required to the outstanding Office action or notice, unless previously filed;
- (2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in \$1.20(d)) required pursuant to 37 CFR 1.137(d).

The petition includes payment of the petition fee and a statement of unintentional delay. 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." The statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3). The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition. No terminal disclaimer is required in this application.

However, the petition must be dismissed because it does not satisfy requirement (1) above.

On petition, applicant argued that there were extenuating circumstances and that the abandonment was unintentional. No additional response to the final rejection accompanied the petition.

The proposed reply to a final Office action required for consideration of a petition to revive must be either (1) a Notice of Appeal (and fee required by law), (2) an amendment that *prima facie* places the application in condition for allowance, (3) the filing of a continuing application, (4) a request for continuing examination under § 1.114, or (5) if applicable, a § 1.129(a) submission.

In light of *pro se* applicant's arguments, the application file was forwarded to the examiner for consideration. The examiner reaffirmed that applicant has not submitted a response that *prima facie* places the application in condition for allowance. Thus, petitioner has failed to submit the required reply.

In order for the application to be revived, petitioner must submit the required reply within the meaning of 37 C.F.R. § 1.137(b)(1). As of the writing of this decision, no new amendment has been made of record in this application.

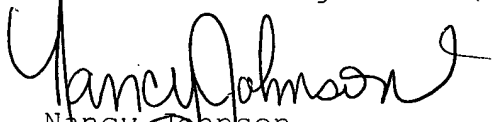
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.



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Office of Petitions

¹ Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

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